

ASSEMBLY BILL

No. 38

Introduced by Assembly Member Reyes

December 2, 2002

An act relating to the West Fresno Elementary School District, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 38, as introduced, Reyes. West Fresno Elementary School District.

(1) Existing law provides for emergency apportionments to school districts subject to specified conditions including, in certain circumstances, the repayment of an emergency loan over a period of no more than 10 years and the appointment by the Superintendent of Public Instruction of an administrator who would exercise the powers and responsibilities of the governing board of the school district.

This bill would require the Superintendent of Public Instruction to appoint an administrator for the West Fresno Elementary School District who would assume all the rights, duties, and powers of the governing board of the school district. The bill would require the governing body of the district to serve as an advisory body to the administrator and would specify that it not receive any compensation. The bill would authorize the administrator to terminate the employment of certain district personnel, as provided.

The bill would continue the authority of the superintendent and the administrator over the school district until certain enumerated conditions are met, including the completion of assessment and improvement plans for the school district.

The bill would require the administrator to consider, on a monthly basis or more frequently if desired, information from one or more specified groups. The bill would require the County Office Fiscal Crisis and Management Assistance Team (FCMAT) to conduct comprehensive assessments and complete, by July 1, 2003, improvement plans regarding instruction, finance, facilities, personnel management, and community relations. The bill would require the FCMAT to determine at least every 6 months whether the school district is making substantial and sustained progress in the implementation of the plans. The bill would authorize the administrator, with the approval of the superintendent, to enter into agreements on behalf of the district and to change any existing district rules, policies, or practices, as provided.

The bill would require the school district to bear 100% of all costs associated with implementing its provisions, thereby imposing a state-mandated local program. The bill would require the administrator to be deemed an employee of the school district for certain purposes.

The bill would appropriate an unspecified amount of money for an emergency loan to the West Fresno Elementary School District.

(2) This bill would make a legislative finding and declaration of unique circumstances in this regard.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason and would provide that with regard to any other mandates, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that because
2 of the fiscal emergency in which the West Fresno Elementary



1 School District finds itself and in order to ensure the district's
2 return to fiscal solvency, it is necessary that the Superintendent of
3 Public Instruction assume control of the school district by
4 appointing an administrator for the West Fresno Elementary
5 School District. Therefore, the Superintendent of Public
6 Instruction, in consultation with the Fresno County
7 Superintendent of Schools, shall appoint an administrator with
8 recognized expertise in management and finance who, in
9 consultation with the Superintendent of Public Instruction, shall
10 do all of the following:

11 (a) Implement substantial changes in the fiscal policies and
12 practices of the West Fresno Elementary School District,
13 including, if necessary, the filing of a petition under Chapter 9 of
14 the federal Bankruptcy Act for the adjustment of indebtedness of
15 the district.

16 (b) Revise the educational program of the West Fresno
17 Elementary School District to reflect realistic income projections,
18 in response to the dramatic effect of the changes in fiscal policies
19 and practices upon educational program quality and the potential
20 for the success of all pupils.

21 (c) Encourage all members of the school community to accept
22 a fair share of the burden of the fiscal recovery of the West Fresno
23 Elementary School District.

24 (d) Consult, for the purposes described in this act, with the
25 governing board of the West Fresno Elementary School District,
26 the exclusive representatives of the employees of the district,
27 parents, and the community.

28 (e) Consult with and seek recommendations from the
29 Superintendent of Public Instruction and the County Office Fiscal
30 Crisis and Management Assistance Team authorized pursuant to
31 subdivision (a) of Section 42127.8 of the Education Code for the
32 purposes described in this act.

33 SEC. 2. (a) Notwithstanding any provision of the Education
34 Code, the administrator appointed pursuant to Section 1 shall
35 immediately assume all of the rights, duties, and powers of the
36 governing board of the West Fresno Elementary School District
37 and may employ, on a short-term basis, any staff necessary to assist
38 the administrator, including, but not limited to, a certified public
39 accountant, as follows:



(1) To facilitate the appointment of the administrator and the employment of any necessary staff, for the purposes of this section, the Superintendent of Public Instruction and county superintendent are exempt from the requirements of Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code and Part 2 (commencing with Section 10100) of the Public Contract Code.

(2) The salary and benefits of the state-appointed administrator shall be established by the Superintendent of Public Instruction and paid by the school district.

(3) During the time of appointment, the employee, if otherwise an employee of the state or of the county superintendent, shall be deemed an employee of the school district, but shall remain in the same retirement system under the same plan as if the employee had remained with the office of the county superintendent or any state office currently held by the employee. Upon the expiration or termination of the appointment, the employee has the right to return to his or her former position, or to a position at substantially the same level as that position, if that former position was with the state or the office of the county superintendent. The time served in the appointment shall be counted for all purposes as if the employee had served that time in his or her former position with the state or with the office of the county superintendent.

(b) For the period of time during which the administrator exercises the authority described in subdivision (a), the governing board of the West Fresno Elementary School District has no rights, duties, or powers and is not entitled to any stipend, benefits, or other compensation.

(c) Notwithstanding any other provision of law, the state-appointed administrator may, in accordance with appropriate notice and hearing procedures, terminate the employment of any district superintendent of schools, or deputy, associate, or assistant superintendent of schools, or other person employed in an equivalent capacity, whose duties include overseeing, managing, or otherwise directing the fiscal and budgetary operations of the West Fresno Elementary School District, and who is employed by the West Fresno Elementary School District under a contract of employment renewed after the effective date of this act if the employee fails to document, to the satisfaction of the state-appointed administrator, that before the effective date of this

1 act he or she either advised the governing board of the district, or
2 his or her superior, that actions contemplated or taken by the
3 governing board could result in the fiscal insolvency of the district,
4 or took other appropriate action to avert that fiscal insolvency.

5 (d) With the approval of the Superintendent of Public
6 Instruction, the state-appointed administrator may enter into
7 agreements on behalf of the school district and, subject to any
8 contractual obligation of the school district, change any existing
9 school district rules, regulations, policies, or practices as necessary
10 for the effective implementation of the improvement plans
11 specified in Section 4 of this act.

12 (e) The authority of the state-appointed administrator under
13 this section shall continue until all of the following conditions
14 occur:

15 (1) Two complete fiscal years have elapsed following the
16 appointment of the administrator or, at any time after one complete
17 fiscal year has elapsed following that appointment, if the
18 state-appointed administrator determines, and so notifies the
19 Superintendent of Public Instruction, that future compliance by
20 the West Fresno Elementary School District with the improvement
21 plans is probable.

22 (2) The state-appointed administrator completes the
23 assessment and improvement plans specified in Section 4 of this
24 act.

25 (3) Not less than every six months after development of the
26 improvement plans, the County Office Fiscal Crisis and
27 Management Assistance Team (FCMAT), after consultation with
28 the state-appointed administrator, determines that the school
29 district made substantial and sustained progress in implementation
30 of the plans in the major functional area.

31 (4) The state-appointed administrator certifies that all
32 necessary collective bargaining agreements have been negotiated
33 and ratified, and that the agreements are consistent with the terms
34 of the recovery and improvement plans.

35 (5) The district completes all reports required by the
36 Superintendent of Public Instruction and the state-appointed
37 administrator.

38 (6) The Superintendent of Public Instruction concurs with the
39 assessment of the state-appointed administrator and FCMAT that

1 future compliance by the West Fresno Elementary School District
2 with the improvement plans is probable.

3 (f) If all of the conditions specified in subdivision (e) occur, the
4 governing board of the West Fresno Elementary School District
5 shall regain all of its rights, duties, and powers.

6 (g) Notwithstanding subdivision (f), if the West Fresno
7 Elementary School District violates any provision of the recovery
8 plans, the state-appointed administrator may reassume, in
9 accordance with this section, all of the rights, duties, and powers
10 of the governing board of the school district. The Superintendent
11 of Public Instruction shall return to the governing board of the
12 school district all of its rights, duties, and powers reassumed under
13 this subdivision if he or she determines that the conditions of
14 subdivision (e) are satisfied.

15 SEC. 3. The state-appointed administrator who has control
16 over the West Fresno Elementary School District shall consider, on
17 a monthly basis, or more frequently if so desired by the
18 administrator, information from one or more of the following
19 groups:

20 (a) The governing board of the school district.

21 (b) Any advisory council of the school district.

22 (c) Any parent-teacher organization of the school district.

23 (d) Representatives from the community in which the school
24 district is located.

25 (e) The Superintendent of Public Instruction.

26 (f) The County Office Fiscal Crisis and Management
27 Assistance Team.

28 SEC. 4. (a) The County Office Fiscal Crisis and Management
29 Assistance Team (FCMAT) shall conduct comprehensive
30 assessments and shall complete, by July 1, 2003, the following
31 improvement plans for the West Fresno Elementary School
32 District:

33 (1) An instructional improvement plan that includes special
34 education and programs for English language learners and is
35 consistent with the financial improvement plan required by
36 paragraph (2). The plan shall specify pupil outcomes that reflect
37 significant improvement in pupil achievement, particularly in the
38 areas of reading, writing, and mathematics. Among the areas
39 addressed by the plan shall be the alignment between the written,
40 taught, and tested curriculum consistent with the state adopted

1 instructional standards, and the use of assessment data to make
2 appropriate pupil placements and allocate district resources.
3 Included in the plan shall be a clear link between professional
4 development for all instructional staff and pupil achievement
5 objectives, including the need for ongoing analysis and use of
6 assessment results to tailor instruction to meet the needs of all
7 pupils.

8 (2) A financial improvement plan that is consistent with the
9 instructional improvement plan required by paragraph (1) and that
10 includes the current and future projected solvency and fiscal
11 integrity of the school district. The financial improvement plan
12 shall also include, but not be limited to, specific strategies to fund
13 the full implementation of the improvement plans specified in this
14 section and to improve the following:

15 (A) Management information systems.

16 (B) Accounting and internal control procedures.

17 (C) Attendance accounting procedures.

18 (3) A facilities improvement plan that is consistent with the
19 financial improvement plan required by paragraph (2), and that
20 includes, but is not limited to, specific strategies for improving the
21 following:

22 (A) Protection and safety for pupils, employees, and district
23 property.

24 (B) Ongoing maintenance of district property.

25 (C) Management control and procedures for managing all
26 construction and modernization projects.

27 (4) A personnel management improvement plan that is
28 consistent with the financial improvement plan required by
29 paragraph (2), and that includes, but is not limited to, specific
30 strategies for improving the following:

31 (A) The recruitment, retention, screening, assessment, and
32 hiring procedures for all district staff.

33 (B) The training of members of the governing board of the
34 school district in the subjects about which members of the
35 governing board shall have knowledge in order to discharge their
36 duties as board members effectively.

37 (C) The assessment of the administrative practices of the
38 school district and staff development to ensure that staff have the
39 knowledge and skills required to manage effectively the

1 educational programs, finances, safety, and facilities maintenance
2 of the school district.

3 (D) The calculation and maintenance of appropriate and
4 efficient full-time equivalent staffing ratios for all school district
5 staff.

6 (E) The governance structure of the school district in relation
7 to board policy development, operational effectiveness, and
8 responsiveness to the community.

9 (F) In addition, the personnel management improvement plan
10 shall provide data and analysis on the number of district
11 certificated personnel who are serving on credential waivers or
12 emergency permits. The district shall develop plans for providing
13 monitoring and support for personnel in their daily instructional
14 duties and in completing subject matter and professional
15 preparation requirements through a traditional, university-based
16 program, alternative certification program, or training to pass the
17 CBEST exam.

18 (5) A community relations improvement plan that is consistent
19 with the financial improvement plan required by paragraph (2),
20 and that includes, but is not limited to, specific strategies for
21 improving the communication among the governing board,
22 personnel of the school district, pupils, and parents.

23 (b) Based upon its progress reports, FCMAT shall recommend
24 to the Superintendent of Public Instruction those designated
25 functional areas of school district operation that it determines are
26 appropriate for the governing board of the school district to
27 assume.

28 (c) Commencing in December 2003, and each six months
29 thereafter until June 2004, FCMAT shall file a written status report
30 with the appropriate fiscal and policy committees of the
31 Legislature, including any special committees created for the
32 purpose of reviewing the reports, and with the Members of the
33 Legislature who represent the West Fresno Elementary School
34 District, the advisory board of the school district, the
35 Superintendent of Public Instruction, the Director of Finance, and
36 the Secretary for Education. The reports shall include the progress
37 that the West Fresno Elementary School District is making in
38 meeting the recommendations of the improvement plans
39 developed pursuant to this section.



1 SEC. 5. (a) The West Fresno Elementary School District
2 shall bear 100 percent of all costs associated with implementing
3 this act, except for the assessment and improvement plans
4 specified in Section 4 of this act.

5 (b) The state-appointed administrator shall be deemed an
6 employee of the West Fresno Elementary School District for all
7 purposes of errors and omissions liability insurance policies.

8 SEC. 6. The sum of ____ (\$____) is hereby appropriated from
9 the General Fund to the Superintendent of Public Instruction for
10 apportionment to the West Fresno Elementary School District for
11 the purpose of an emergency loan. In order to qualify for the loan,
12 the district shall comply with Article 2.5 (commencing with
13 Section 41325) of Chapter 3 of Part 24 of the Education Code and
14 the conditions stipulated in this act.

15 (b) Funds may be disbursed from the proceeds of the loan only
16 if the state-appointed administrator and the County Office Fiscal
17 Crisis and Management Assistance Team jointly determine that
18 the disbursement is necessary.

19 (c) Based on the needs of the district to meet its obligations, the
20 Superintendent of Public Instruction may direct the Controller to
21 disburse, on a monthly basis, specific amounts of the emergency
22 loan before the approval of all of the conditions established by this
23 act.

24 (d) For the fiscal year in which the apportionments are
25 disbursed and each fiscal year thereafter, the Controller, or his or
26 her designee, shall cause an audit to be conducted of the books and
27 accounts of the district, instead of the audit required by Section
28 41020 of the Education Code. At the discretion of the Controller,
29 the audit may be conducted by the Controller, his or her designee,
30 or an auditor selected by the county superintendent and approved
31 by the Controller. The costs of these audits shall be borne by the
32 district. These audits are required until the Superintendent of
33 Public Instruction determines that the district is financially
34 solvent, but not earlier than one year following the implementation
35 of the plan nor later than the time the apportionment, including
36 interest, is repaid. In addition, the Controller shall conduct quality
37 control reviews pursuant to subdivision (c) of Section 14504.2 of
38 the Education Code.

39 SEC. 7. (a) Notwithstanding subparagraph (A) of paragraph
40 (2) of subdivision (a) of Section 41327 of the Education Code, the



1 debt shall be repaid as a straight-line loan amortized over a 10-year
2 term. This amount shall be repaid by the school district, plus
3 interest calculated at a rate equal to the rate earned by the Pooled
4 Money Investment Account on the date this act becomes effective,
5 for a period not to exceed 10 years.

6 (b) If payment is not made within 60 days after the scheduled
7 date, the Controller shall pay the defaulted loan payment of
8 principal and interest by withholding that amount from the next
9 available payment that would otherwise be made to the county
10 treasurer on behalf of the district pursuant to Section 14041 of the
11 Education Code. However, subject to the approval of the
12 Department of Finance, the amount withheld may be in monthly
13 amounts as determined by an agreement between the West Fresno
14 Elementary School District and the Controller during the period
15 beginning with the next available apportionment through the
16 month preceding the next scheduled payment.

17 (c) The Director of Finance may amend the payment schedule
18 set forth in subdivision (a) if the director concludes that the
19 amendment is warranted and is in the best interests of both the state
20 and the West Fresno Elementary School District education
21 program. Upon that determination, the director shall notify the
22 Joint Legislative Budget Committee that the payment scheduled
23 will be changed on the date that is 90 days from the date of
24 notification if the Legislature is in session. If the 90-day period
25 ends during a recess of the Legislature or while the Legislature is
26 not in session, the 90-day period shall be extended until the
27 Legislature reconvenes. Amendments to the payment schedule
28 shall defer the unpaid portion of a repayment of the earliest fiscal
29 year in which no other repayment is scheduled. Interest shall
30 accrue on the unpaid portion of a repayment from the scheduled
31 due date until the time the payment is actually made. The interest
32 charge shall be the same rate as specified in Section 41471 of the
33 Education Code.

34 (d) The school district may repay its loan obligation without
35 incurring any prepayment penalties.

36 SEC. 8. The Department of Finance is authorized to redirect
37 funds appropriated in Item 6110-107-0001 of Section 2.00 the
38 Budget Act of 2002 for the purposes of funding activities of the
39 County Office Fiscal Crisis and Management Assistance Team
40 specified in Section 4 of this act.

1 SEC. 9. (a) Any allegation of fraud or criminal misuse of
2 district funds on the part of a current or former employee of the
3 district shall be thoroughly investigated by the appropriate law
4 enforcement agency.

5 (b) Notwithstanding the repayment schedules provided
6 pursuant to Section 41327 of the Education Code, any district
7 funds, property, or other assets recovered pursuant to subdivision
8 (a) of this section shall be immediately directed toward repayment
9 of the loan made pursuant to subdivision (a) of Section 6 of the act
10 adding this section.

11 SEC. 10. The Legislature finds and declares that due to the
12 unique circumstances regarding the West Fresno Elementary
13 School District, a general statute cannot be made applicable within
14 the meaning of Section 16 of Article IV of the California
15 Constitution.

16 SEC. 11. No reimbursement is required by this act pursuant
17 to Section 6 of Article XIII B of the California Constitution
18 because the only costs that may be incurred by a local agency or
19 school district are the result of a program for which legislative
20 authority was requested by that local agency or school district,
21 within the meaning of Section 17556 of the Government Code and
22 Section 6 of Article XIII B of the California Constitution.

23 SEC. 12. This act is an urgency statute necessary for the
24 immediate preservation of the public peace, health, or safety
25 within the meaning of Article IV of the Constitution and shall go
26 into immediate effect. The facts constituting the necessity are:

27 In order to address the fiscal emergency in which the West
28 Fresno Elementary School District finds itself and to ensure that
29 it meets its cash obligations for this fiscal year, it is necessary that
30 this act take effect immediately.

